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MONTANA LEGISLATIVE HISTORY

Chapter 639 1989

Bill H 401 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 2/3	✓ C	Hearing Date(s) 3/21	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

Ch. No.	Senate Bill	House Bill	Sponsor	Title
639		401	D. Brown	AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS; REQUIRING THE DEPARTMENT TO ADOPT RULES CONCERNING CARRYING OF FIREARMS; PERMITTING A PROBATION AND PAROLE OFFICER TO CARRY A CONCEALED WEAPON; APPROPRIATING MONEY FOR TRAINING, SUPPLIES, AND EQUIPMENT; AMENDING SECTIONS 45-8-317 AND 46-23-1002, MCA; AND PROVIDING AN EFFECTIVE DATE. ..... Page 1636
640	209		B. Brown	AN ACT TO INCREASE THE SALARY SCHEDULE OF COURT REPORTERS AND TO REVISE COURT FILING FEES THAT ARE APPLIED TO COURT REPORTERS' SALARIES; AMENDING SECTIONS 3-5-602 AND 25-1-202, MCA; AND PROVIDING EFFECTIVE DATES. ..... Page 1638
641	315		Rapp-Svrcek	AN ACT GENERALLY REVISING THE LAW RELATING TO WORKERS' COMPENSATION; REQUIRING THE STATE WORKERS' COMPENSATION INSURANCE FUND AND PRIVATE WORKERS' COMPENSATION INSURERS TO ALLOW AN EMPLOYER THE OPTION OF INCLUDING A MEDICAL DEDUCTIBLE TERM IN ANY WORKERS' COMPENSATION POLICY; PROVIDING THAT BENEFITS PAID UNDER A MEDICAL DEDUCTIBLE TERM MAY NOT BE INCLUDED BY THE STATE WORKERS' COMPENSATION INSURANCE FUND FOR THE PURPOSE OF SETTING AN EMPLOYER'S INSURANCE RATE; AMENDING SECTION 39-71-2304, MCA; CONTINGENTLY REPEALING CHAPTER 428, LAWS OF 1989; AND PROVIDING AN APPLICABILITY DATE. ..... Page 1640
642	431		Gage	AN ACT GENERALLY REVISING THE PUBLIC GAMBLING LAWS OF MONTANA; PROVIDING FOR LICENSURE AND REGULATION OF GAMBLING ACTIVITIES BY THE DEPARTMENT OF JUSTICE; PROVIDING FOR AN APPROPRIATION AND A STATUTORY APPROPRIATION; PROVIDING FOR A GAMING ADVISORY COUNCIL; AMENDING SECTIONS 17-7-502, 23-5-101 THROUGH 23-5-104, 23-5-108, 23-5-123, 23-5-131, 23-5-135, 23-5-311 THROUGH 23-5-313, 23-5-321, 23-5-331, 23-5-412 THROUGH 23-5-414, 23-5-431, 23-5-503, 23-5-509, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610 THROUGH 23-5-613, 23-5-616, 23-5-625, 23-5-631, 23-5-1101, AND 23-5-1105, MCA; REPEALING SECTIONS 23-5-105 THROUGH 23-5-107, 23-5-109, 23-5-121, 23-5-122, 23-5-124 THROUGH 23-5-127, 23-5-132 THROUGH 23-5-134, 23-5-141 THROUGH 23-5-144, 23-5-201 THROUGH 23-5-211, 23-5-301 THROUGH 23-5-303, 23-5-314 THROUGH 23-5-316, 23-5-322, 23-5-323, 23-5-332, 23-5-401 THROUGH 23-5-403, 23-5-411, 23-5-415 THROUGH 23-5-418, 23-5-421 THROUGH 23-5-423, 23-5-504 THROUGH 23-5-508, 23-5-510, 23-5-511, 23-5-601, 23-5-605, 23-5-606, 23-5-609, 23-5-615, 23-5-617, 23-5-618, 23-5-626, 23-5-627, 23-5-635, 23-5-636, 23-5-1103, AND 23-5-1104, MCA; AND PROVIDING EFFECTIVE DATES. ..... Page 1642
643	474		Mazurek	AN ACT TO DESIGNATE THE PORTION OF U.S. INTERSTATE HIGHWAY 15 BETWEEN BUTTE AND GREAT FALLS AS THE "MAUREEN AND MIKE MANSFIELD HERITAGE ROUTE". ..... Page 1666
644		364	R. Nelson	AN ACT TO REQUIRE IMMUNIZATION OF STUDENTS ATTENDING PRESCHOOLS, VOCATIONAL-TECHNICAL CENTERS, COLLEGES, AND UNIVERSITIES; TO INCLUDE MUMPS IN THOSE DISEASES THAT REQUIRE IMMUNIZATION PRIOR TO A STUDENT'S ATTENDANCE IN A SCHOOL OTHER THAN A POSTSECONDARY SCHOOL; TO ELIMINATE THE RIGHT OF A STUDENT TO BE EXEMPT FROM IMMUNIZATION ON PERSONAL GROUNDS; TO REQUIRE THAT A RELIGIOUS EXEMPTION BE REASSERTED ANNUALLY BY AFFIDAVIT, SUBJECT TO A PENALTY FOR FALSE SWEARING; TO REMOVE THE LIMIT ON THE LENGTH OF TIME THAT A STUDENT MAY BE EXCLUDED FROM SCHOOL DURING A DISEASE OUTBREAK IF THE STUDENT IS EXEMPT FROM IMMUNIZATION REQUIREMENTS; TO DELETE THE 30-DAY GRACE PERIOD FOR TRANSFER PUPILS; TO REQUIRE A SCHOOL TO RELEASE IMMUNIZATION RECORDS OF A TRANSFERRING PUPIL; AMENDING SECTIONS 20-5-402 THROUGH 20-5-405, AND 20-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE. ..... Page 1667

HOUSE FINAL STATUS

CREATE CENTENNIAL SCHOLARSHIP PROGRAM

1/24	INTRODUCED	
1/25	REFERRED TO EDUCATION & CULTURAL RESOURCES	
1/30	HEARING	
2/09	COMMITTEE REPORT--BILL PASSED AS AMENDED	
2/11	2ND READING PASSED	66 27
2/11	TAKEN FROM ENGROSSING	
2/11	REREFERRED TO APPROPRIATIONS	
3/02	HEARING	
3/16	HEARING	
3/18	COMMITTEE REPORT--BILL NOT PASSED AS AMENDED	
3/20	ADVERSE COMMITTEE REPORT ADOPTED	52 46

HB 401 INTRODUCED BY BROWN, D., ET AL.
PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS
BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/24	INTRODUCED	
1/25	REFERRED TO JUDICIARY	
2/03	HEARING	
2/06	COMMITTEE REPORT--BILL PASSED AS AMENDED	
2/11	2ND READING PASSED	82 7
2/14	3RD READING PASSED	86 10
	TRANSMITTED TO SENATE	
2/15	REFERRED TO JUDICIARY	
3/21	HEARING	
3/21	COMMITTEE REPORT--BILL CONCURRED	
3/22	2ND READING CONCURRED	39 3
3/27	3RD READING CONCURRED	45 4
	RETURNED TO HOUSE	
4/06	SIGNED BY SPEAKER	
4/06	SIGNED BY PRESIDENT	
4/07	TRANSMITTED TO GOVERNOR	
4/11	RETURNED WITH LINE ITEM VETO	
4/21	MOTION FAILED TO OVERRIDE LINE ITEM VETO	52 47
5/03	FILED WITH SECRETARY OF STATE	
	CHAPTER NUMBER 639 EFFECTIVE DATE:	7/01/89

HB 402 INTRODUCED BY BROWN, J., ET AL.
CONTINUE FUNDING FOR SHODAIR GENETICS PROGRAM

1/24	INTRODUCED	
1/25	REFERRED TO HUMAN SERVICES & AGING	
1/26	FISCAL NOTE REQUESTED	
2/01	FISCAL NOTE RECEIVED	
2/03	HEARING	
2/03	FISCAL NOTE PRINTED	
2/04	COMMITTEE REPORT--BILL PASSED	
2/07	2ND READING PASSED	83 13
2/09	3RD READING PASSED	87 13
	TRANSMITTED TO SENATE	
2/10	REFERRED TO BUSINESS & INDUSTRY	
2/15	REREFERRED TO TAXATION	
3/02	HEARING	

HOUSE BILL NO. 401

INTRODUCED BY Dave Brown Mercer Ste Hoe Mayn

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS; REQUIRING THE DEPARTMENT TO ADOPT RULES CONCERNING CARRYING OF FIREARMS; PERMITTING A PROBATION AND PAROLE OFFICER TO CARRY A CONCEALED WEAPON; APPROPRIATING MONEY FOR TRAINING, SUPPLIES, AND EQUIPMENT; AMENDING SECTIONS 45-8-317 AND 46-23-1002, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-1002, MCA, is amended to read:

"46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

~~(2)~~(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court."

Section 2. Section 45-8-317, MCA, is amended to read:

"45-8-317. Exceptions. Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

~~(6)~~(7) a person authorized by a judge of a district court of this state to carry a weapon; or

~~(7)~~(8) the carrying of arms on one's own premises or at one's home or place of business."

NEW SECTION. **Section 3. Appropriation.** The following money is appropriated from the general fund to the department of institutions for firearms training, supplies, and equipment:

INTRODUCED BILL
HB 401

	FY 1990	FY 1991
Training	$14,586	$1,729
Supplies	1,233	1,337
Equipment	11,600	0
Total	$27,419	$3,066

NEW SECTION. **Section 4.** **Effective date.** [This act] is effective July 1, 1989.

-End-

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 336	1-23	2-8	2-9			2-9					
HB 349	1-23	2-9	2-9			2-9					
HB 350	1-23	2-9	2-9	2-9							
HB 351	1-23	2-9	2-9			2-9					
HB 368	1-25	2-2	2-3			2-3					
HB 369	1-25	2-2	TABLED	ON 2-13							
HB 386	1-25	2-3	2-3			2-3					
HB 390	1-25	2-10	2-10	2-10							
HB 393	1-25	2-7	2-15			2-15					
HB 401	1-25	2-3	2-3			2-3					
HB 404	1-25	2-7	TABLED	ON 2-13							
HB 409	1-26	2-3	2-3	2-3							
HB 413	1-26	2-3	2-3	2-3							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Amendments and Votes: Rep. Gould moved to adopt the amendments that were proposed by Mr. Morrison (EXHIBIT 2), along with a friendly amendment offered on page 1, line 24. strike "may", insert does.

Recommendation and Vote: A DO PASS AS AMENDED motion was made by Rep. Knapp, motion seconded by Rep. Gould. Motion CARRIED unanimously.

HEARING ON HOUSE BILL 401

Presentation and Opening Statement by Sponsor:

Rep. Dave Brown, House District 72 stated that HB 401 is a bill to allow parole probation officers to carry firearms under certain circumstances. The probation officers that work in the field are in fact working under very difficult circumstances where they often find that their lives are on the line. Presently, they are not allowed to carry firearms. In a survey that was done during the course of a study, 38 officers were interviewed; 33 of those officers supported carrying firearms. Of those 38 officers, 30 indicated that they had been physically threatened or assaulted sometime in the last 15 years in the course of action related to their duty. These incidences occurred under such circumstances as: Following court action, in jails, while performing presentence investigation activities, office interviews and when transporting clients. The attempted assaults reported include 12 death threats, 10 incidences involving firearms, 8 involving a knife or sharp instrument, 3 threatening phone calls to officers homes, and 1 threat of sexual attack directed against a female officer. Rep. Brown stated that this legislation does not ask for unusual force or undue discretion to carry firearms by parole probation officers. It does, however, authorize the Dept. under certain and controlled circumstances to allow those officers that are out in the field dealing with convicted felons to carry firearms. A statement of intent was presented to the committee, listed as EXHIBIT 3.

List of Testifying Proponents and What Group They Represent:

Kurt Chisholm, Former Deputy Director of the Dept. of Institutions
Mike Ferriter, Dept. Institutions, Community Corrections Division
Jim Pomroy, Dept. Institutions, Corrections Bureau

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Kurt Chisholm expressed to the committee that personally, he wished that the field staff did not have to be armed; however, under the circumstances there are occasions that warrant the carrying of firearms. Mr. Chisholm stated that the Dept. of Institutions is in favor of this bill because they want to approach the issue very conservatively. They are not going to allow their parole officers to routinely carry a firearm. They are not going to allow their parole officers to purchase their own firearms because it is important that the Dept. control the weapons, the size of weapon that is being used as well as the type of ammunition being used. It is also important for the Dept. if this bill is passed and it does have a fiscal impact, that they need to appropriately train all officers and they need to relative the use of the firearms.

Mike Ferriter, in support of HB 401 submitted a written testimony accompanied by a report prepared by an internal department committee which studied in detail the issue of Parole and Probation field staff carrying firearms in certain situations (EXHIBITS 4 and 5).

Jim Pomroy stated that as part of the above mentioned study presented by Mr. Ferriter, he accompanied officers on arrests and searches to refresh himself in terms as to how things are on the streets. He found that the inability to protect oneself in high risk situations is very frightening. Often the parole probation officers are without police backup when they need to make an arrest or conduct a search, therefore, they are being put in very questionable situations by requiring them to carry out those responsibilities by law. Montana has a client population of 3,200 felony offenders. Approximately 50% of these people have been convicted of violent crimes. The parole officers must search the offenders homes, their automobiles and their purses. They have the right to arrest these people, day or night, with or without law enforcement assistance, which is often not readily available in many Montana communities. The population of 3,200 offenders is supervised by 39 probation and parole officers, giving an average case load of approximately 81 people. Many of these offenders have transferred to Montana through the interstate compact on the supervision of probation or parolees. There are 27 other states that allow

their probation and parole officers to carry firearms. Often times the offender then, coming in from other states may often have the perception that the officers are armed and may be prepared for that type of confrontation if need be. Basically, the parole officers hands are tied with no protection when such incidences arise and present themselves.

Questions From Committee Members: Rep. Gould commented that his concern has to do with the fact that statistically, more law enforcement officers in the United States are killed by their own guns. Mr. Ferriter stated that the Dept. is extremely interested in appropriately training the officers. Part of the proposal, they have indicated that they would include night firing and many different varieties of training. Only as an absolute necessity would an officer use a weapon. He stated that they are hopeful that they would never have to use a weapon. Mr. Ferriter expressed to Rep. Gould that he believed the officers would be able to handle his concern for safety by appropriate training and by good solid judgement on the officers behalf.

Rep. Eudaily questioned where the firearms training would be held for the parole and probation officers? Mr. Chisholm stated that they have training facilities available at the Montana State Prison where the officers could be trained. Additionally, the law enforcement academy would also be an option. It is not the intent of the Dept. to build a separate firearms training center for the parole and probation officers.

Rep. Addy stated that if a probation officer were to go to a district judge and apply for a permit to carry a concealed weapon it would in all likelihood be issued. Why doesn't the Dept. go about it on an individual basis demonstrating need to the district judge for a concealed weapons permit? Mr. Chisholm responded that he was convinced that it is presently taking place. He did state, however, that he did not want them operating in that fashion while they are working for the Dept. and on the Dept.s' time. If anything were to happen it would be hard to separate whether or not the officer had permission to carry the firearm. Mr. Chisholm continued that if they are going to go in that direction, very conservatively at first, then he wants clear statutory o.k. that they can grant permission under certain restrictive circumstances for those people to carry a firearm.

Rep. Brooke commented as to the cost involved in administering this particular program. Mr. Chisholm stated that he does not see the bureaucracy of the procedures and the policy that they are going to overlay into the process about when and if they carry firearms is going to cost much. What it does do, obviously, is complicate the decision making when it becomes necessary for them to carry firearms. Mr. Chisholm indicated that they want the officers decision to be exercised very conservatively, but reasonably so they don't complicate the process when the needs arise.

Rep. Addy questioned Mr. Ferriter as to what the circumstances would be in regard to a "high risk" situation. Mr. Ferriter responded that there are a variety of factors that would determine the risk of the situation. The number one factor, according to Mr. Ferriter would be the unavailability of police backup. Other factors would include the offenders background history and the environment (neighborhood, home, tavern, etc.) in which the arrest or search may take place.

Closing by Sponsor: Rep. Brown requested that the record reflect the numerous phone calls he has received from parole and probation officers across the State of Montana. Due to the severe weather conditions they were unable to attend the hearing of HB 401, but are however, in strong support of the passage of this bill.

DISPOSITION OF HOUSE BILL 401

Motion: A DO PASS motion was made by Rep. Daily, motion seconded by Rep. Aafedt.

Rep. Addy moved adoption of the Statement of Intent as proposed, motion seconded by Rep. Eudaily. Motion CARRIED unanimously.

Discussion: Council suggested that on page 1, line 22 following "firearms", insert , including concealed firearms,.

Amendments and Votes: Rep. Darko motioned to move the above mentioned amendment, seconded by Rep. Gould. Motion CARRIED.

Recommendation and Vote: Rep. Darko moved DO PASS AS AMENDED, motion seconded by Rep. Rice. A vote was taken and CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date February 3, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 3, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 401 (first reading copy -- white), with statement of intent attached, do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 1, line 13.
Insert: "STATEMENT OF INTENT

A statement of intent is required for this bill because it requires the department of institutions to adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms by probation and parole officers. The legislature intends that these rules address but not be limited to the following:

(1) required firearms training courses and certification procedures;

(2) types of firearms to be carried by officers;

(3) procedures for requesting the carrying of a firearm for performing a specific duty;

(4) circumstances under which the carrying of a firearm is permitted or prohibited;

(5) control and storage of firearms purchased by the department; and

(6) procedures for monitoring and documenting the use of a firearm in performance of an official duty."

2. Page 1, line 22.
Following: "firearms"
Insert: ", including concealed firearms,"

EXHIBIT 3
DATE Feb. 3, 1999
HB 401-Rep. D. Brown

STATEMENT OF INTENT

LC0060SI

A statement of intent is required for this bill because it requires the department of institutions to adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms by probation and parole officers. The legislature intends that these rules address but not be limited to the following:

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(2) types of firearms to be carried by officers;

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(4) circumstances under which the carrying of a firearm is permitted or prohibited;

(5) control and storage of firearms purchased by the department; and

(6) procedures for monitoring and documenting the use of a firearm in performance of an official duty.

EXHIBIT 4
DATE Feb. 3, 1989
HB 401-Rep. D. Brown

Mr. Chairman and Members of the Committee:

For the record my name is Mike Ferriter from the Department of Institutions.

House Bill 610 which was passed by the 50th Montana Legislature required the Department of Institutions and Probation and Parole Officers to study and recommend to the Legislature, the appropriateness and necessity of Probation and Parole Officer carrying firearms. As a result of House Bill 610, a Firearms Committee was established. The Committee consisted of five Adult Probation and Parole Officers, three Central Office Corrections staff and one Assistant Attorney General. The findings of the Committee indicate that it is appropriate and necessary for Adult Probation and Parole Officers to carry firearms under certain circumstances and conditions. The Department of Institutions endorses the recommendation of the Firearms Committee with the understanding that those policies can only be implemented if adequate funds are appropriated for training and firearms acquisition.

Because each member of the Firearms Committee had a different perspective on the carrying of firearms, the Committee decided that it was necessary to gain input from a variety of outside individuals and agencies. Surveys were developed containing questions relative to the need and appropriateness of Adult Probation and Parole Officers carrying firearms. The surveys were sent to:

1. All Montana Adult Probation & Parole Officers
2. All Montana County Sheriffs
3. All Montana Police Chiefs
4. All Montana District Court Judges
5. All other Adult Probation & Parole Agencies in the United States
6. All members of the Montana Parole Board

The survey returns overwhelmingly supported Parole Officers

EXHIBIT 4
DATE 2-3-89
HB 401

carrying firearms under certain circumstances and conditions. These circumstances and conditions are:

1. When making official arrests in anticipated high risk situations.

2. When transporting prisoners in high risk situations.

3. When conducting home visits in high risk situations.

4. When conducting violation investigations in high risk situations.

5. When conducting searches in high risk situations.

The Department recognizes that Adult Probation and Parole Officers perform these duties as a part of their day-to-day job responsibilities. It is for this reason the Department supports the proposal for P&P Officers to be permitted to carry a firearm upon the determination of need and appropriateness by the regional supervisor or the Central Office administration. Prior to implementation of this legislation a policy must be adopted which addresses:

1. Training.
2. Utilization.
3. Methods of carrying firearms.
4. Control and storage of firearms.
5. Investigations and reports.
6. Pre-employment briefing requirements.
7. Types of Firearms.

I feel it is very significant for the committee to understand that the Department's support of this Bill is contingent upon the requested funding. It is absolutely imperative that the appropriate training is provided before P&P Officers are issued firearms. Funding authorizing the Department of Institutions to purchase firearms and ammunition will also insure that officers

EXHIBIT 1
DATE 2-3-89
HB 401

are armed with only Department issued and approved firearms and ammunition.

Funding for the necessary equipment and training upon passage of this Bill is not included in the Department of Institutions present budget request. Therefore, it is requested that additional funds for these items be added to the appropriations bill.

In closing, I urge you to support this bill and assure you that the Department will cautiously and discreetly determine the need and appropriateness of each firearm request. Each decision will be calculated to insure the safety and well-being of the public, the Probation & Parole Officer and of the supervised client. I appreciate your support and I am confident that your decision will be one that will assist Montana's Adult Probation and Parole Officers in carrying out their duties in a safe and professional manner.

EXHIBIT 4
DATE 2-3-89
HB 401

Firearms Proposal Fact Sheet

The Firearms Committee recommends the following:

1. Training - All P&P officers requesting to carry a firearm must complete a 40-hour prescribed training course at Montana State Prison.

   Classroom Training Topics:

   A. weapons familiarization
   B. Weapons retention
   C. Defense tactics
   D. Special weapons

   Firing Range Training Topics:

   A. Familiarization
   B. Night Fire
   C. Qualification (officers will be required to requalify annually)

   Estimated Training Cost = $11,586 (This figure does not include a suggested Interpersonal Communication Seminar)

2. Authorized Weapon - Weapons should be purchased by the Department of Institutions and should be .357 revolvers of a reputable make with a barrel length of no less than 2 inches.

3. Authorized Ammunition - Only .38 or .357caliber, non-steel jacketed, factory made ammunition of a reputable make should be permitted.

4. Firearms Control Officer - A specially trained P&P officer should be assigned to distribute and inspect all firearms in each P&P office.

EXHIBIT 5
DATE Feb. 3, 1989
HB 401-Rep. D. Brown

DEPARTMENT OF INSTITUTIONS

TED SCHWINDEN, GOVERNOR
1539 11TH AVENUE
STATE OF MONTANA
(406) 444-3930
HELENA, MONTANA 59620-1301

December 1, 1988

President of the Senate
Speaker of the House of Representatives
Capitol Station
Helena, MT 59620

Dear Sirs:

Pursuant to the provisions of HB 650, Chapter 572, Montana 50th Legislative Session, I am hereby submitting for your consideration, a report prepared by an internal department committee which studied in detail the issue of Parole and Probation field staff carrying firearms in certain situations.

I have reviewed the report and find that its research data and subsequent recommendations are acceptable. Therefore, I recommend that this report be accepted by your respective assemblies as the official position by this Department on the matter. Additionally, and again pursuant to the provisions of Chapter 572, I have submitted a request for a bill draft for appropriate enabling legislation which, if passed, would grant clear statutory authority to our agency to allow for the arming of Parole officers in certain and restricted circumstances.

In our judgment, the enabling legislation should simply be a one statement addition to Section 46-23-1002, MCA, granting permissive authority to the Department with rule making authority within which the department could administer the specifics relative to policy and procedure. Additionally, the proposed legislation should exempt our Parole Officers from the concealed weapon provisions of Section 45-8-317, MCA. The implementation of these proposals would also require an appropriation to this department and would be requested in conjunction with the passage of the enabling legislation.

I trust that you will find the report and its recommendations a prudent and reasonable adjustment to long standing tradition that has very infrequently allowed the use of firearms by our field staff. I can assure you that the Department will very cautiously and prudently grant such authority under the provisions of what we are now proposing and only in the interest of the public safety, the officer at risk, and the safety of the supervised clients.

Sincerely,

CARROLL SOUTH, Director
Department of Institutions

CS:bt

cc: Governor Schwinden

EXHIBIT 5
DATE 2-3-89
HB 401

Report to the Director of the Department of Institutions on the Issue of Probation and Parole Officers Carrying Firearms

As a result of House Bill 610, enacted by the 50th Session of the Montana Legislature, the Director of the Department of Institutions appointed a committee to study the appropriateness and necessity of Probation and Parole officers carrying firearms. The bill required the Department to submit legislation if the recommendation of the committee supported the carrying of firearms. The Firearms Committee consists of the following individuals:

Mike Ferriter, Field Services Supervisor (Chairman)
James Pomroy, Chief, Community Corrections Bureau
Mike McCarty, Probation & Parole Officer (Missoula)
Linda Gray, Probation & Parole Officer (Havre)
Randy Gowan, Probation & Parole Officer (Billings)
Mark Murphy, Assistant Attorney General
Mike Mahoney, Associate Warden of Treatment, Montana State Prison
John Riley, Probation & Parole Officer (Alternate)

The Committee met on six occasions. The results of the research of facts, surveys, and situations are contained in this report.

The results of the study show that carrying firearms by Probation and Parole Officers is appropriate and necessary under certain circumstances.

SUMMARY OF THE RESEARCH

Survey of Field Officers

All Probation and Parole Officers were surveyed with seven questions relative to the appropriateness and necessity of carrying firearms (see Attachment A). In summary, officers often feel reluctant to perform their responsibilities due to the lack of a means of self-defense when:

a. making certain types of arrests in potentially risky situations;

b. searching high risk clients in potentially risky situations, and;

c. making home visits on high-risk clients or in areas where law enforcement back-up is not readily available and where there is a potential for confrontation.

Of the 38 officers, 30 indicated that they have been physically threatened or assaulted. These incidents have occurred during the past fifteen years. The circumstances under which these incidents occurred include, not only the three situations identified above, but also following court action, in jails, while performing pre-sentence investigation activities, office interviews, and when transporting clients. The attempted assaults or threats reported included: 12 death threats; 10 incidents involving firearms; 8 incidents involving a knife or a sharp instrument; 3 threatening phone calls to officers' homes; and one threat of sexual attack directed toward a female officer.

Thirty-three officers indicated that they support the carrying of firearms. Sixteen of those officers indicate that law enforcement back-up is not readily available when called upon. This situation was cited most frequently in rural areas and in those areas in which law enforcement agencies are understaffed. Five officers indicated they did not support the carrying of firearms.

Most of the officers were personally interviewed by telephone regarding the incidents cited above. It is obvious to the Committee that Probation and Parole Officers are often faced with situations in which their safety and the safety of others may be in jeopardy due to circumstances that they cannot control. Due to the statutory responsibilities placed upon these officers, they frequently find themselves in such predicaments. The powers of arrest and search appear to be job functions which often lead to confrontations with clients in which the officer must at times act without assistance from law enforcement.

Survey of County Sheriffs

Questionnaires were also sent to all 56 county sheriffs in Montana regarding Probation and Parole Officers carrying firearms. (See Attachment B) Forty-five sheriffs supported the concept of officers carrying firearms, three were opposed, four were undecided, and four provided no response. The general consensus of those in support was that Probation and Parole Officers frequently are involved in a hazardous occupation similar to that of a peace officer. They deal primarily with a convicted felon population, many of whom have a history of violence which is threatening to the personal safety of the P&P Officer.

Several sheriffs said that since Probation and Parole Officers have arrest and search powers, they are placed in dangerous situations where immediate assistance from law enforcement is not always available. Clients who are arrested for probation or parole violations often blame the officers and make threats toward them. The sheriffs did express the concern that if armed, all Probation and Parole Officers should be required to receive the proper training in the use of firearms.

The sheriffs who opposed officers carrying firearms felt that probation and parole officers work together with law enforcement officers and should not allow themselves to be put into positions of endangerment. However, experience has demonstrated that P&P Officers are placed in such positions involuntarily. In these instances, the Committee supports the position of the peace officers that a responsibility for mutual protection exists and that the officer should not be an additional liability to law enforcement. This is clearly the position held by those in law enforcement who support the concept.

In addition to the questionnaire being completed by the sheriffs, the three regular members of the Board of Pardons were also surveyed. Two of those members were in favor of the Probation and Parole Officers carrying firearms and one was opposed.

Survey of Police Chiefs

There are 63 police chiefs in the State of Montana. Fifty police chiefs responded to the survey. Forty-eight police chiefs are in favor of Probation and Parole Officers carrying weapons and two are opposed.

Those in favor of arming the Probation and Parole officers indicate that, due to the nature of the job and of the clientele served, the Probation and Parole Officers required a firearm for protection. The police chiefs indicate a need for mutual protection between local law enforcement and Probation and Parole Officers. Police chiefs recognize that at times, there is a lack of quick response from their agencies in special circumstances, or in rural settings. This group also is of the opinion that a Probation and Parole Officers has the constitutional right to protect himself, to exert authority over clients, to protect bystanders, to protect the client, and to have the ability to be more effective in the field when necessary.

The two opposed stated that dangerous offenders should be incarcerated and not present in the community. Secondly, they indicated that weapons can be taken away by a client and used against a Probation and Parole Officer. (See Attachment C)

Survey of District Court Judges

Thirty-six Montana district court judges were surveyed. Twenty-five of the judges responded.

Six judges stated they either had no opinion or were ambivalent relative to Probation and Parole Officers being armed. Seven judges did not support the concept. Twelve judges were in favor of officers carrying firearms. (See Attachment D)

Those judges in favor of carrying firearms cited the following reasons for their support:

a. self protection;

b. nature of clientele;

c. confrontive situations facing Probation and Parole Officers;

d. judges' expectations of the duties of Probation and Parole Officers;

e. for public security; and

f. because of threats received.

Those judges opposed gave the following reasons:

a. officers should request the assistance of qualified peace officers;

b. too expensive;

c. the time spent for training could be better used pursuing the goals of rehabilitation;

d. opposition to anyone carrying firearms except police officers, sheriffs officers, and highway patrolmen; and

e. no reason for it.

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Survey of Other States

Questionnaires were sent out to the other 49 states. Forty-five were returned. No response was received from Arkansas, North Dakota, Texas, and Vermont.

Twenty-six states require or allow Probation and Parole Officers to carry firearms:

a. Five states require firearms while on duty. They are Alabama, Maine, Nevada, New York, and Utah.

b. One state allows firearms routinely, that being California.

c. Twenty states allow firearms to be carried only under specific conditions which include:

1. For purposes of self-defense and the defense of others;

2. To make an arrest or assist in the arrest of violators wanted for violent crimes;

3. When transporting prisoners;

4. When off-duty and commuting between office and home;

5. When working in high-crime areas;

6. When threats have been lodged against the employee or his/her family;

7. To, from, and during firearms training;

8. Only in the performance of intensive supervision work;

9. To prevent or suppress a riot, mutiny, or serious disturbance;

10. To prevent an escape, or when the threat of escape exists;

11. During court or hearing appearances when requested by the presiding judge or hearings officer;

12. When confronting individuals who have demonstrated the propensity to commit violence;

13. When the agency supervisor determines that an employee's life is in danger;

14. In any situation deemed necessary by the agency supervisor of Field Services;

15. When performing field investigations;

16. When conducting searches;

17. When there is perceived danger.

When asked to specify reasons for developing policies allowing the use of firearms, these states provided the following responses:

1. To establish the authority for the carrying of a firearm and to spell out the required procedures on qualifications and training;

2. Officers have limited peace officer status;

3. Officers are required to make unscheduled visits to parolees at home and employment. They are also required to transport and arrest violators in many situations. The nature of the job requires parole officers to be part police officer and part counselor;

4. Their state legislature authorized the carrying of firearms;

5. Labor union effort and an increase in numbers of serious and hard-core offenders on caseloads. Also, the attitude of the community in some areas toward all types of authority caused some concern for officers who visit high-crime areas;

6. Because officers were carrying all types of firearms and ammunition;

7. Policy was promulgated to establish standards for training, type of weapon permissible and certification all of which focus on reducing liability of officers and the agency.

8. Advised by state attorney general;

9. In response to officers' requests to carry firearms while on duty;

10. To clarify prior policy which indicated officers could carry firearms on an "as-needed" basis;

11. Have found through experience that many probationers and parolees carry weapons and are prone to violence.

12. Initially, arming of parole officers was the result of a lawsuit brought by the employee union. The authority was then placed in state statute.

13. Due to a lack of training and liability issues.

In twenty-seven of the responding states, there was no noticeable change in the officers carrying out their job responsibilities when armed. All states responding to the question about the number of times firearms were discharged annually indicated 0-10 times. The responsibility for the purchase of firearms is assumed by the agency in 14 states, by the officer in nine states, and by either or both in three states. The responsibility for purchase of ammunition is

assumed by the agency in 16 of the responding states, by the officer in six states, and by either or both in four states. (See Attachment E)

Assigned Duties of Probation and Parole Officers Wherein Confrontation is Possible

Montana Probation and Parole Officers are required to fulfill a variety of job duties and responsibilities. Probation and Parole Officers (class code 195017) job duties include the following:

1. Supervise clients by making an assigned number of face-to-face contacts as outlined by supervision standards. In addition, Probation and Parole Officers supervise persons during their probation or parole in accordance with conditions set by the court or the Parole Board (Sections 42-23-1011 & 1021, MCA).

2. Conduct face-to-face investigations with individuals awaiting sentencing.

3. Testify in district court and in informal hearings relative to sentencing and revocation of clients.

4. Arrest clients when an alleged probation violation exists (Section 46-23-1012, MCA).

5. Arrest clients when an alleged parole violation exists (Section 46-23-1023, MCA).

6. Transport prisoners under special circumstances at the request of the Department of Institutions, or as a courtesy to law enforcement or the courts.

7. Conduct searches of clients, their homes, automobiles or body fluids as required by the courts or the Board of Pardons.

CONCLUSIONS

Given the duties and responsibilities placed upon the P&P officers by statute and department policy, and;

Given the fact that the fulfillment of these duties creates situations that, at times and under special circumstances, are potentially dangerous (and in many cases have been demonstrated to be dangerous) for the officer and the public at large, and;

Given the fact that these same situations have prompted 26 other state jurisdictions, which is over half of the 50 states, to authorize their respective P&P field staff to arm themselves in one fashion or another, and;

Given that the duties of the Montana P&P staff are almost totally compatible with those of other states, and;

Given the facts of the matter considered by the committee, which include those areas required by House Bill 610, therefore;

The committee recommends that the department support the concept of Probation/Parole Officers being allowed to carry firearms, with supervisory approval, under the following special circumstances:

a. When Making Official Arrests in Anticipated High-risk Situations:

Probation and Parole Officers have been given the statutory authority to arrest probationers and parolees without a warrant when, in that officer's opinion, the person has violated his probation or parole conditions (Sections 46-23-1012 and 46-23-1023, MCA). The enforcement of these conditions requires diligent monitoring of client activities. When there is evidence of violations, arrest will often occur. Therefore, officers are obligated to make arrests at any time of the day or night in various locations and situations. This may or may not include the assistance of law enforcement personnel. As indicated by the survey, law enforcement officials feel that, even when they are available, the Probation and Parole Officers should be allowed to protect themselves. Information received further suggests that law enforcement assistance is becoming less available due to manpower shortages among law enforcement agencies. Probation and Parole Officers additionally perform these arrests in the homes of known offenders, in rural areas in which law enforcement assistance is generally unavailable, in bars, on the streets and in areas where legal jurisdiction is bifurcated. Not only should Probation and Parole Officers be allowed to protect themselves, but also they may be placed in positions in which they are obligated to protect the public. Since a majority of the states do allow their officers to carry firearms, clients from those states being supervised in Montana most likely perceive that officers in this state are armed. Although this is presently a misconception on the part of that client population, the possibility does exist that such a perception could result in the injury or death of one of our officers in the event of a confrontation.

Therefore, when an arrest must be made, the officer, in consultation with his supervisor, must determine that he is placed at considerable risk before being allowed to carry a firearm. Considerations should include the client's recent history under supervision, past record of violent behavior, the location in which the arrest will be made, whether or not law enforcement will assist and, if so, whether or not the law enforcement agency requests that the parole officer be armed.

b. When Transporting Prisoners in High-risk Situations:

Probation and Parole Officers are called upon to transport prisoners being held under the authority of the Department of Institutions in several circumstances. Law enforcement assistance will always be requested. Generally, law enforcement personnel will assist with transporting and, since officers know in advance that transportation of a prisoner is necessary, no firearm is required. If the person to be transported has a history of aggression toward authority, has ever escaped custody by force, or has been convicted of a crime involving violence, the committee considers the officer to be at risk.

Consideration should be given to arming the officer in these cases and under the following circumstances:

i. from jail to on-site hearings; (Often, the prisoner is released to the custody of the parole officer by the jailer.)

ii. from the field office to jail;

iii. from various community locations (bars, homes, etc.) to jail; and

iv. from other states back to the State of Montana for extradition purposes when Montana State Prison staff is not available for transporting.

Many of the clients whom we serve have a demonstrated propensity toward violence and are unpredictable in their behavior. Under the above scenarios, clients are also faced with the emotional stress of being incarcerated, sometimes for an extensive period of time.

c. When Conducting Home Visits in High-risk Situations:

Although the Committee is recommending that Probation and Parole Officers be allowed to carry firearms, it recognizes a fundamental philosophy of the Department of Institutions to rehabilitate offenders through the establishment of helping relationships of a social work nature. Therefore, the agency does promote home visits by the Probation and Parole Officers to determine the socioeconomic and family conditions of their clients. Such counseling activities include the entire client population. These home visits may place the officers in dangerous situations. In instances in which home visits are conducted in some of the state's high crime areas, or rural locations in which the officer may be subjected to potentially threatening situations, arming the officer may be reasonable and necessary. Such authority should be extended to those situations in which home visits are conducted on known offenders who have exhibited patterns of violent behavior and are classified as "maximum" for supervisory purposes.

d. When Conducting Violation Investigations in High-risk Situations:

Probation and Parole Officers must investigate suspected or alleged violations of the conditions of supervision expressed by the courts or the Board of Pardons. Most often, these investigations are of a minor nature, and will most likely be resolved through discussion, counseling or revision of expectations. However, situations arise in which clients involved in the officer's investigation have demonstrated unpredictable, violent behavior, they may be under the influence of drugs or alcohol, and are potentially dangerous to the officer or other individuals. Further, when individuals are placed in positions in which their liberty is in jeopardy (i.e., the investigation of alleged violations), the potential of violent or unpredictable behavior on the part of some clients is great. Therefore, among the higher risk client groups, (those classified as maximum risk or convicted of an offense involving the use of a weapon), officers should be allowed to carry firearms when conducting such investigations.

e. When Conducting Searches on High-risk Clients:

Probation and Parole Officers have the statutory authority to search both probationers and parolees (Sections 46-23-218, 46-23-215, and 46-23-1011, MCA). In nearly every case, officers are further ordered to search clients, their homes and automobiles by court order. Without this authority it would be difficult, if not impossible, to determine compliance with the conditions of release. Searches present threatening and emotional circumstances within the relationship between the client and the Probation and Parole Officer. As stated in the situations surrounding investigations, some individuals being searched are potentially dangerous and volatile. They are often concealing illegal substances or items which may result in their return to incarceration or in the filing of new charges. Therefore, when searching clients with extensive histories of violence or weapons possession, the officer should be armed if unaccompanied by law enforcement personnel. This is particularly true if reasonable expectation exists that a physical confrontation will occur or if the search is being conducted for the possession of weapons with reasonable cause.

The Firearms Committee has drafted a proposed policy for consideration by the Department of Institutions should the Legislature approve the carrying of firearms by Probation and Parole Officers. The policy addresses several issues which must be considered by the Department before implementing any approved legislation. These areas include:

a. authorization prerequisites (training);

b. utilization;

c. methods of carrying firearms;

d. control and storage of firearms;

e. investigations and reports; and

f. pre-employment briefing requirement.

SUMMARY

In summary, the Firearms Committee presents this report to provide a clear picture of the issues relative to the development of a Probation and Parole firearms policy. The topic of a permissive firearms policy for Montana Probation and Parole Officers has been debated for several years and has been aired in a variety of arenas. The pros and cons of a Firearms Policy are as numerous as the number of officers serving the agency. Surveying a variety of sources provides a clear picture of the issue. The anticipated result of the firearms study is that a firearms policy will be passed by the Montana Legislature which will prove to be in the best interest of the agency, its employees and the clientele served.

ATTACHMENT A

EXHIBIT 5
DATE 2-3-89
HB 401

MONTANA PROBATION AND PAROLE OFFICER SURVEY

Survey Completed December 1987

Information compiled by:

The Firearm Study Committee

EXHIBIT 5
DATE 2-3-89
HB 401

MONTANA PROBATION AND PAROLE OFFICER SURVEY

Number of officers responding: 38

Question #1: Describe your duties and responsibilities as a probation and parole officer.

The following is a list of the most common responses and the number of officers who responded similarly.

1.	Write reports (PSIs, violations, investigations)	20
2.	Supervise/monitor clients	15
3.	Perform home visits on clients	8
4.	Meet with clients	7
5.	Testify in court	7
6.	Perform searches	7
7.	Provide counseling to clients	4
8.	Protect community	4
9.	Incarcerate clients	4
10	Verify information	2
11.	Enforce P&P Conditions	2
12.	Contact clients	2
13.	Refer clients to other agencies	2

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MONTANA PROBATION AND PAROLE OFFICER SURVEY

Number of officers responding: 38

Question #2: Please describe what job-related duties, if any, have placed you in a physically threatening position.

The following is a list of the most common job duties that P&P officers feel put them in a physically threatening position. The information also includes the number of officers who responded similarly.

1.	Arrests	24
2.	Home visits	14
3.	Searches	10
4.	Confronting clients	2
5.	Testify in court	2
6.	Taking urine samples	2
7.	Office visits	2
8.	Performing investigations	
9.	Transporting clients	1
10	Enforcing P&P conditions	1
11.	Type of clients	

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MONTANA PROBATION AND PAROLE OFFICER SURVEY

Number of officers responding: 38

Question #3: Have you ever been reluctant to carry out your job duties because of a lack of protection? If yes, explain.

12 officers indicated they are not reluctant to carry out job duties because of a lack of protection.

26 officers indicated they are reluctant to carry out job duties because of a lack of protection.

The following is a list of explanations for the officer's feelings. The information also includes the number of officers who responded similarly.

1.	Arresting or assisting law enforcement officers in the arrest of clients	9
2.	Performing searches on clients	7
3.	Visiting clients at home	7
4.	Interrogating or confronting clients	3
5.	Transporting clients	2
6.	Type of clients	2
7.	Some clients may be armed	1

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MONTANA PROBATION AND PAROLE OFFICER SURVEY

Number of officers responding: 38

Question #4: Have you ever been physically threatened or assaulted? Please provide specifics.

8 officers indicated they have never been assaulted or threatened.

30 officers indicated they have been assaulted or threatened.

The following is a list of circumstances or locations where the threats or assaults occurred. The information also includes the number of officers who responded similarly.

1.	Threatened following court action	14
2.	Threatened while arresting client	11
3.	Threatened while performing a search	9
4.	Threatened in county jail/institution	9
5.	Threatened doing home visit or contact outside office	5
6.	Threatened while performing PSI interview	3
7.	Threatened in office following a client reporting	2
8.	Threatened while transporting client	2

The attempted assaults or threats reported by the P&P offices included:

12 death threats;
10 incidents physically involving firearms;
8 incidents physically involving a knife or a sharp instrument;
3 threatening phone calls to officer's home; and
1 threat of sexual abuse directed toward a female officer.

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MONTANA PROBATION AND PAROLE OFFICER SURVEY

Number of officers responding: 38

Question #5: If threatened or assaulted, would you have done anything differently if you possessed a firearm?

20 officers indicated they would have done nothing different if they possessed a firearm.

6 officers indicated they would have done things differently if they possessed a firearm.

12 officers made no comment on the question.

Of the six officer reporting they would have done things differently, three indicated they would have drawn their firearms in specific situations.

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MONTANA PROBATION AND PAROLE OFFICER SURVEY

Number of officers responding: 38

Question #6: Do you support the concept of Montana State Probation and Parole Offices carrying firearms? If so, please explain.

33 officers indicated they support the concept.

5 officer indicated they do not support the concept.

The following is a list of explanations for the officers' responses of support for the concept. The list includes the number of officers who responded similarly.

1.	The decision to carry a firearm should be the choice of the individual officer	15
2.	Officers should be allowed to carry firearms because of the "type" of clients they work with.	8
3.	Officers in rural/isolated areas have little law enforcement backup; therefore, they should be permitted to carry firearms.	8
4.	To assist law enforcement in the arrest and search of P&P clients.	8
5.	Officers should be allowed to carry firearms because clientele is unpredictable and they may be carrying firearms.	8
6.	Clients believe P&P offices presently carry firearms.	2
7.	In order to prevent a tragedy.	2

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MONTANA PROBATION AND PAROLE OFFICER SURVEY

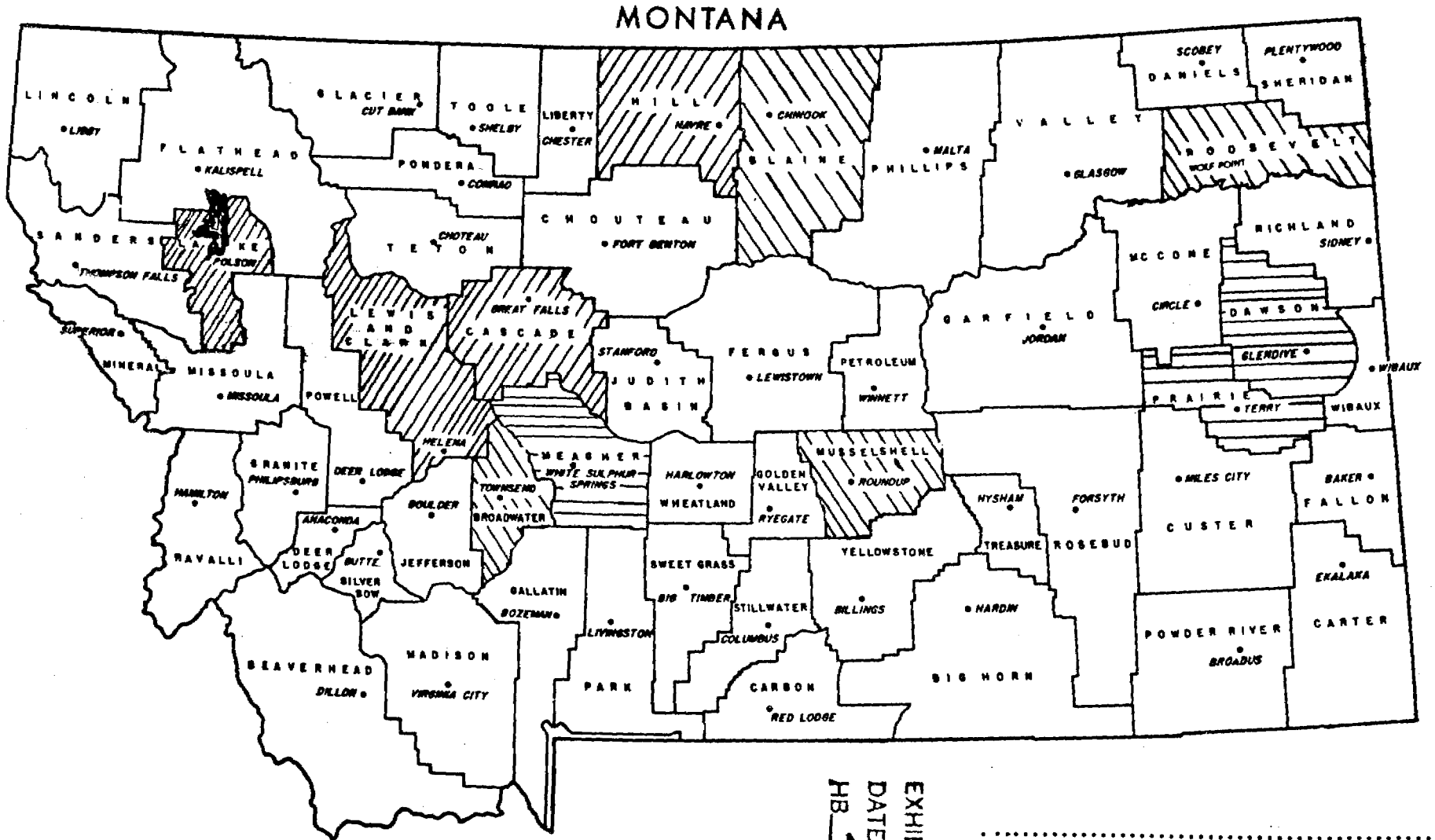
Number of officers responding: 38

Question #7: Is law enforcement backup readily available when called upon?

22 officers indicated backup was readily available.
16 officers indicated backup was not readily available.

Officers indicated that backup was not readily available in rural areas and in some areas because some law enforcement agencies are "short staffed."

ATTACHMENT B



LEGEND:

= in favor
= opposed
= undecided
= no response

EXHIBIT 5
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BOARD OF PARDONS SURVEY

= in favor 2 Members
= opposed 1 Member

Attachment C

DEPARTMENT OF INSTITUTIONS

EXHIBIT 5
DATE 2-3-89
HB 401

TED SCHWINDEN, GOVERNOR
1539 11TH AVENUE
STATE OF MONTANA
(406) 444-3930
HELENA, MONTANA 59620-1301

RESULTS OF FIREARMS SURVEY

There are 63 police chiefs in the State of Montana (Medicine Lake no longer has a police department). Fifty police chiefs responded to the survey. Forty-eight police chiefs are in favor of Probation and Parole Officers (PPOs) carrying weapons and two are opposed to it.

The following is a prioritized list of reasons for and against PPOs carrying weapons. It is weighted according to the number of times the reason was mentioned by police chiefs.

Chiefs in Favor of Weapons

- Protection of PPOs (nature of the job, type of person PPOs deal with) (43)
- Mutual protection of assisting law enforcement officers (7)
- Lack of quick assistance from law enforcement in special circumstances or in rural settings (6)
- A constitutional right to protect oneself (4)
- To enhance authority over clients (2)
- Protection of bystanders (1)
- Enable PPOs to be more "aggressive" and effective in the field (1)
- Protection of client (1)

Chiefs Opposed to Weapons

- Dangerous offenders should be incarcerated, and not in the community (1)
- Weapons can be taken away by client and used against PPO (1)

Summary

According to the survey, it can be stated that an overwhelming majority of the Chiefs of Police in Montana are in favor of Probation and Parole Officers carrying firearms.

EXHIBIT 5
DATE 2-3-89
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Summary

According to the survey, it can be stated that an overwhelming majority of the Chiefs of Police in Montana are in favor of Probation and Parole officers carrying firearms.

Attachment D

EXHIBIT 5
DATE 2-3-89
HB 401

STATE OF MONTANA
DEPARTMENT OF INSTITUTIONS
HELENA

To Mike Ferriter **Date:** 12/28/87

From Randy Gowen

Subject Firearms Survey

Survey of House Bill 610 was mailed to all 36 Montana District Judges. The question asked dealt with the issue of Montana Probation/Parole Officers carrying firearms. Twenty-five of the judges responded in the following manner:

6 judges stated they had no opinion or "maybe" P&P Officers should have the right to carry a firearm

7 judges stated no. Some of these judges gave a few reasons.

12 judges stated yes. Many outlined in detail why P&P Officers should carry firearms.

This information was obtained and compiled by Probation/Parole Officer Randy Gowen.

RESPONSE TO QUESTIONNAIRE REGARDING P/P OFFICERS CARRYING FIREARMS 12/87

STATE X after state = P/P officers can/do carry firearms.		OPERATES PROB	PAROLE	DEFINED PEACE OFFICERS	WRITTEN POLICY	DEVELOPMENT EXPLANATION	ATTITUDE CHANGE	INCREASED ASSAULTS	# TIMES FIREARMS DISCHARGED (average)	PURCHASE RESPONSIBILITY (agency/officer) FIREARM	AMMO.	COMMENTS:
ALABAMA	X	X	X	YES	YES	Same powers of arrest as state sheriff since 1939.	NO	NO	0 - 10	0	A	Required.
ALASKA	X	X	X	NO	YES	Regular development of policies and procedures.		NO	0 - 10	A	A	Not routinely.
ARIZONA			X	NO	NO		NO					Not allowed.
CALIFORNIA	X		X	YES	YES	Lawsuit brought by union.	NO	NO	0 - 10	A	A	Allowed routinely.
COLORADO	X		X	YES	YES	Long history of "as needed" basis.	YES	NO	0 - 10	O/A	A	Not routinely.
CONNECTICUT	X		X	NO	YES	Lethal weapons require written policy.	NO	NO	0 - 10	A	A	Not routinely.
DELAWARE		X	X	YES	YES	Belief that P/P officers do not need to be armed.	NO					Not allowed.
FLORIDA		X		NO	YES	Belief that P/P officers do not need to be armed.	NO					Not allowed.
GEORGIA	X		X	YES	YES	Nature of duties; high risk.	YES	NO	0 - 10	A	A	Not routinely.
HAWAII			X	NO	YES	To ensure that P/P officers do not carry firearms.	YES					Not allowed.
IDAHO	X		X	YES	YES	Lethal weapons require written policy.	NO	NO	0 - 10	A	A	Not routinely.
ILLINOIS	X		X	YES	YES	Part of original departmental procedures specifications.	NO	NO	0 - 10	0	A	Not routinely.
INDIANA			X	NO	YES	To ensure that P/P officers do not carry firearms.	NO					Not allowed.

ATTACHMENT E
EXHIBIT 5
DATE 2-3-89
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RESPONSE TO QUESTIONNAIRE REGARDING P/P OFFICERS CARRYING FIREARMS 12/87

STATE X after state = P/P officers can/do carry firearms.		OPERATES PROB	PAROLE	DEFINED PEACE OFFICERS	WRITTEN POLICY	DEVELOPMENT EXPLANATION	ATTITUDE CHANGE	INCREASED ASSAULTS	# TIMES FIREARMS DISCHARGED (average)	PURCHASE RESPONSIBILITY (agency/officer) FIREARM	AMMO.	COMMENTS:
IOWA				YES	YES	See state-by-state notes.						Not allowed.
KANSAS			X	YES	YES	To ensure that P/P officers do not carry firearms.						Not allowed.
KENTUCKY	X	X	X	YES	YES	Clarification.	YES	NO	0 - 10	0	0	Not routinely.
LOUISIANA	X	X	X	YES	YES	Need for uniform training, safety and handling of firearms	NO	NO	0 - 10	A	A	Not routinely.
MAINE	X	X	X	YES	YES	Clarification.	YES	NO	0 - 10	O/A	O/A	Required for ISP officers.
MARYLAND		X	X	NO	YES	To ensure that P/P officers do not carry firearms.	NO					Not allowed.
MASSACHUSETTS	X		X	YES	YES	Liability, accreditation issues & inclusion in Field Serv. policy.	YES	NO	0 - 10	A	A	Not routinely.
MICHIGAN	X	X	X	NO	YES	Legislation authorizing use.	NO	NO	0 - 10	0	0	Not routinely.
MINNESOTA		X	X	NO	NO		NO					Not allowed.
MISSISSIPPI	X	X	X	YES	YES	Part of original departmental policy.	NO	NO	0 - 10	0	0	Not routinely.
MISSOURI		X	X	NO	NO		NO					Not allowed.
NEBRASKA			X	YES	NO		NO					Not allowed.

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RESPONSE TO QUESTIONNAIRE REGARDING P/P OFFICERS CARRYING FIREARMS 12/87

STATE "P/P" after state indicates P/P officer can or must carry firearm on duty.		OPERATES PROB	OPERATES PAROLE	DEFINED PEACE OFFICERS	WRITTEN POLICY	DEVELOPMENT EXPLANATION	ATTITUDE CHANGE	INCREASED ASSAULTS	# TIMES FIREARMS DISCHARGED (average)	PURCHASE RESPONSIBILITY (agency/officer) FIREARM	PURCHASE RESPONSIBILITY (agency/officer) AMMO.	COMMENTS:
NEVADA	X	X	X	YES	YES	Lethal weapons require written policy.			0 - 10	0	O/A	Required.
NEW HAMPSHIRE	X	X	X	YES	YES	Legislation authorizing use.	NO	NO	0 - 10	A	A	Not routinely.
NEW JERSEY			X	NO	NO		YES					Not allowed.
NEW MEXICO	X	X	X	YES	YES	Legislation authorizing use.	NO		0 - 10	0	0	Not routinely.
NEW YORK	X		X	YES	YES	Have had policy since inception of agency.	NO		0 - 10	A	A	Required.
NO. CAROLINA	X	X	X	NO	YES	Directive from Attorney General's office.	NO	NO	0 - 10	A	A	Intensive supervision officers; not routinely.
OHIO	X	X	X	NO	YES	Liability issues.	NO	NO	0 - 10	A	A	Not routinely.
OKLAHOMA	X	X	X	YES	YES		NO			A	O/A	Not routinely.
OREGON	X	X	X	YES	YES	Contingency planning.	NO		0 - 10	0	0	Not routinely.
PENNSYLVANIA	X		X	YES	YES	Union. Perceived need due to community attitude toward authority.	NO	NO	0 - 10	A	A	Not routinely.
RHODE ISLAND		X	X	NO	NO							Not allowed.
SO. CAROLINA	X	X	X		YES		YES	NO	0 - 10	A	A	Not routinely.

EXHIBIT
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RESPONSE TO QUESTIONNAIRE REGARDING P/P OFFICERS CARRYING FIREARMS 12/87

STATE "X" after state indicates P/P officer can or must carry firearm.		OPERATES PROB.	PAROLE	DEFINED PEACE OFFICERS	WRITTEN POLICY	DEVELOPMENT EXPLANATION	ATTITUDE CHANGE	INCREASED ASSAULTS	# TIMES FIREARMS DISCHARGED (average)	PURCHASE RESPONSIBILITY (agency/officer) FIREARM	AMMO.	COMMENTS:
SO. DAKOTA			X	NO	YES	To ensure that P/P officers do not carry firearms.	NO					Not allowed.
TENNESSEE		X		NO	YES	To ensure that P/P officers do not carry firearms.						Not allowed.
UTAH	X	X	X	YES	YES	Liability issues.		NO	0 - 10	O/A	O/A	Required.
VIRGINIA		X	X	NO	YES	To ensure that P/P officers do not carry firearms.	NO					Not allowed.
WASHINGTON	X	X	X	YES	YES	Requests by officers.	NO			0	0	Not routinely.
W. VIRGINIA		X	X	NO	YES							Not allowed.
WISCONSIN		X	X	NO	YES	To ensure that P/P officers do not carry firearms.						Not allowed.
WYOMING		X	X	NO	YES	Lack of training; liability issues.	YES					Not allowed.
45 states responded.	26	28	42	YES..24 NO...20	YES..39 NO....6		YES,...9 NO....27	YES.....0 NO.....20	0 - 10 in 24 responding states.	A,...14 0,....9 A/O....3	A...16 0....6 A/O,..4	See results tallied below.

P/P officers are required to carry firearms in 5 states: ALABAMA, MAINE, NEVADA, NEW YORK and UTAH.

P/P officers are allowed to carry firearms under certain conditions but not routinely in 20 states: ALASKA, COLORADO, CONNECTICUT, GEORGIA, IDAHO, ILLINOIS KENTUCKY, LOUISIANA, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, NEW HAMPSHIRE, NEW MEXICO, NORTH CAROLINA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SO. CAROLINA and WASHINGTON.

P/P officers are allowed to carry firearms routinely in 1 state: CALIFORNIA

P/P officers are not allowed to carry firearms under any conditions in 19 states: ARIZONA, DELAWARE, FLORIDA, HAWAII, INDIANA, IOWA, KANSAS, MARYLAND, MINNESOTA, MISSOURI, NEBRASKA, NEW JERSEY, RHODE ISLAND, SO. DAKOTA, TENNESSEE, VIRGINIA, W. VIRGINIA, WISCONSIN and WYOMING.

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SUMMARY OF QUESTIONNAIRE RESPONSES:

* 49 questionnaires were sent out; 45 were returned. No response was received from ARKANSAS, NORTH DAKOTA, TEXAS and VERMONT.

* 26 states require or allow P/P officers to carry firearms:

  a. 5 require firearms while on duty: ALABAMA, MAINE, NEVADA, NEW YORK and UTAH. (Intensive supervision officers only, in Maine.)

  b. 1 allows firearms routinely: CALIFORNIA.

  c. 20 allow firearms to be carried under specific conditions only: ALASKA, COLORADO, CONNECTICUT, GEORGIA, IDAHO, ILLINOIS, KENTUCKY, LOUISIANA, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, NEW HAMPSHIRE, NEW MEXICO, NO. CAROLINA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SO. CAROLINA and WASHINGTON.

* 19 states don't allow P/P officers to carry firearms under any conditions: ARIZONA, DELAWARE, FLORIDA, HAWAII, INDIANA, IOWA, KANSAS, MARYLAND, MINNESOTA, MISSOURI, NEBRASKA, NEW JERSEY, RHODE ISLAND, SO. DAKOTA, TENNESSEE, VIRGINIA, W. VIRGINIA, WISCONSIN and WYOMING.

* 28 states operate Probation Programs.

* 42 states operate Parole Programs.

* 26 states operate both Probation and Parole Programs.

* In 24 of the responding states, P/P officers are defined as peace officers; in 20 responding states, they are not designated as such.

* 39 states have written policy regarding the carrying of firearms, 10 of which are written specifically to forbid their being carried.

* In 27 of the responding states, there was no noticeable change in officers' carrying out job responsibilities; 9 states indicated a change.

* All states responding to the question about the number of times firearms were discharged annually indicated 0 - 10 times.

* Responsibility for purchase of firearms is assumed by the agency in 14 responding states, by the officer in 9 states and by either or both in 3 states.

  Responsibility for purchase of ammunition is assumed by the agency in 16 responding states, by the officer in 6 states and by either or both in 4 states.

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STATE - BY - STATE NOTES - FIREARMS POLICY

EXHIBIT 5
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ALABAMA

All P/P officers are required to carry firearms while on duty.

Use restricted to:
1) self-defense
2) lawful request of another peace officer
3) to protect life of self or other while witnessing a violent felony.

Warning shots prohibited.

Shooting from a moving vehicle prohibited.

Officers must requalify annually.

ALASKA

P/P officers may carry firearms when authorized and under specific conditions; not routinely.

Warning shots are allowed only when it appears that deadly force is necessary to prevent the occurence of a violent crime.

CALIFORNIA

Officers are allowed to carry firearms routinely while on duty if they have been trained, have qualified and are authorized.

Firearms are to be used only as defensive weapons.

Warning shots are prohibited.

Semi-annual review of compliance with prerequisites is required.

No personal weapons allowed.

Firearms must be concealed at all times.

Officers will be armed while transporting parole violators.

COLORADO

Officers do not carry firearms routinely while on duty.

May be authorized:
1) when involved in an arrest
2) when transporting a prisoner
3) when there is probable cause to believe that a weapon is necessary to protect life of self or others.

Officers must give supervisor notice of intent to carry prior to incident, if possible. (This requirement is currently being debated, as problems have arisen.)

Officers must requalify annually.

CONNECTICUT

Officers do not carry firearms routinely, but <u>all officers must qualify</u>.

Department issued firearms only.

Use restricted to:
1) apprehension of parolee/inmate
2) specific <u>authorized</u> circumstances where deemed necessary.

Use of force permitted only to protect life - <u>not</u> to prohibit escape.

GEORGIA

Officers do not carry firearms routinely while on duty.

May be authorized:
1) when transporting parolees
2) when involved in arresting parolees
3) when on official business in a high risk area
4) other approved situations where deemed necessary.

Weapons must be concealed at all times.

IDAHO

Officers carry firearms on "as needed" basis only.

Officers must requalify annually.

(Policy was not sent)

ILLINOIS

Only agents supervising adult releasees are allowed to carry firearms, but <u>all officers must qualify</u>.

Use limited to:
1) transporting committed person
2) protect, arrest, apprehend, reconfine committed person
3) to fill assigned security positions requiring firearms
4) training/qualification.

Officers must obtain a Weapons Authorization Identification Card.

Requalification annually.

Department issued handguns only.

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IOWA Probation and Parole Programs are operated by statewide community-based corrections system funded through Community/Correctional Services Department, but are locally administered. One of the community-based programs passed local policy authorizing P/P officers to carry firearms. This policy precipitated a great debate and resulted in the Board of Corrections approving an administrative rule which prohibits local boards from adopting policy authorizing P/P officers to carry firearms. Local boards are in the process of appeal through the administrative rules process which will probably end up in the legislature for resolution. In the meantime, no P/P officers are carrying firearms while on duty.

KENTUCKY P/P officers are authorized to carry firearms only:

1) when anticipating the arrest of an offender
2) when transporting a prisoner
3) when working in a high crime area where being armed is deemed necessary for self-protection.

Officers must provide their own weapons .

LOUISIANA P/P officers are deemed to be peace officers with the same powers and immunities as sheriffs, constables, police officers, etc. However, the P/P officers do not carry firearms routinely. Use restricted to:

1) self-defense
2) protection of others in violent situations
3) high crime/risk areas
4) when threats have been made against officer or his family
5) when arresting or transporting a violator.

P/P officers are on call 24 hours/day, 7 days/week, and, therefore, may have to make judgments on the spur of the moment, so may carry firearms while OFF duty.

Warning shots are prohibited. Firearms may not be used against P/P violators.

Officers must be trained, qualify and be authorized to carry firearms.

MAINE P/P officers who are Intensive Supervision Team members are <u>required</u> to carry issued firearms while on duty.

Other officers may carry if qualified/authorized by supervisor.

Must requalify annually.

Warning shots are prohibited; shooting from a moving vehicle or when there is the possibility of causing injury or death to innocent bystanders is forbidden.

MASSACHUSETTS Officers do not carry firearms routinely while on duty.
Must have valid license to carry a weapon.

Must be a duly authorized Special State Police Officer.

Must have been instructed in policies regarding weapons and use of force.

Must have been trained in use of weapon.

Must have specific authorization from immediate supervisor and the Chief Parole Supervisor.

Use is restricted to:

1) high crime areas
2) threats against officer or his family
3) while involved in arrest/transport of a violator
4) training/qualification

Firearms must be concealed at all times.

MICHIGAN P/P officers may elect to carry firearms for defensive use only; intent to <u>disable</u> only is permitted.

No warning shots; no intimidation.

Must have concealed weapons permit and safety inspection certificate. Weapon must be registered to user.

Officers must requalify annually, must complete the safety program and must have attained full civil service status.

Officers must provide their own weapon according to certain specifications.

Weapons must be concealed at all times.

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MISSISSIPPI Officers do not carry firearms routinely while on duty.

Must complete training, be qualified and authorized.

Use restricted to 1) self-defense
2) to protect self or others in violent situations
3) arrest, transport violators
4) in court appearances when requested by judge
5) off duty while in transit between home and office

May use only as a last resort, when all other alternatives have failed.

No warning shots permitted.

Weapons must be concealed at all times.

NEVADA All sworn peace officers shall carry firearms at all times except:

1) when consuming alcohol
2) while attending family/social events
3) when prohibited by laws of institutions, organizations or business visited or laws of another state while on business or vacation.

All firearms must be concealed at all times, must be registered and inspected.

Authorized firearms: .38 or .357 caliber with 2-6" barrel for on-duty.
Off duty: revolver or semi-automatic pistol approved by department.

Firearms may not be drawn except for the following reasons:

1) to store it
2) to clean/service it
3) to have it ready in arrest situations which appear to be violent; life must be protected.
4) to be discharged in order to protect life of self or others.

No warning shots permitted.

NEW HAMPSHIRE Officers do not carry firearms routinely while on duty.

Use restricted to 1) transporting or apprehension of violator
2) self-defense
3) protection of life of others in violent situations
4) as a last resort if all else fails.

P/P officers may provide own firearm if weapon is approved by department and officer has qualified with that weapon.

Department issues: Ruger Security Six, 2 3/4" barrel Model 5532 .357 handgun.

NEW MEXICO Officers are granted limited peace officer status and may carry firearms
1) when holding in custody or supervision a person convicted of a criminal offense.
2) during field investigations, surveillance, search/seizure, security during hearings.

Officers must be trained, qualified and authroized.

NEW YORK All P/P officers are required to carry Colt or Smith and Wesson .38 or approved personal weapon while on duty.

Personal weapons must be acquired according to department rules.

No reloaded ammunition.

All officers must requalify semi-annually.

NO. CAROLINA Only Intensive Supervision Program Team members may carry firearms.

Must use only for self-defense or protection of other life, and may not use with intent other than to disable.

Weapons may be concealed or unconcealed.

Warning shots are prohibited.

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OHIO — Officers who are authorized to carry firearms must complete the basic course unarmed self-defense.

The Adult Parole Authority shall secure bond for each employee given authorization to carry firearms.

Weapons shall be concealed.

Authorization terminates annually and can be re-issued only through complete requalification.

OKLAHOMA — Officers do not carry firearms routinely while on duty.

Weapons must meet department requirements.

Weapons are to be kept in Controlled Storage, and must be checked in and out with the Firearms Control Officer.

Use is restricted to:

1) self-defense
2) protection of self or others in violent situations
3) intent to disable after all else fails.

OREGON — Officers may carry weapons if trained/qualified/authorized.

Use restricted to:

1) when and to the extent that it is reasonably believed to be necessary to stop an escape or prevent what would otherwise result in serious injury, loss of life or property.
2) times when an order has been given by the functional unit manager unless immediate action is necessary making it impossible to have such an order delivered.

No personal weapons allowed.

PENNSYLVANIA — Officers may elect to carry firearms for defensive purposes only. Staff not desiring to carry must submit a Waiver of Firearms Authorization form.

Firearms must be concealed at all times.

Officers must requalify annually.

SO. CAROLINA — Officers may carry firearms if trained/qualified/authorized.

Type of firearms is limited to certain specified weapons.

Use is restricted to:

1) self-defense
2) to prevent an attack with a deadly weapon on a fellow agent
3) to protect life of other members of the public.

Officers must complete Defensive Tactics and Legal Liabilities Course.

No warning shots permitted.

No shots will be fired at a suspect who is holding a hostage.

UTAH — Officers are armed. Policy is being rewritten at this time.

WASHINGTON — Officers are allowed to carry firearms only under special circumstances:

WHEN OFFICER HAS BEEN THREATENED.

1) Must complete various training courses.
2) Must complete self-protection plan.
3) Must purchase official current concealed weapon permit.
4) Must have certification.
5) Must provide a copu of the formal, written complaint of the threat as filed with law enforcement officials.

May only carry specified firearm and use specified ammunition.

If firearm is drawn it must be for the purpose of self-protection form imminent grievous bodily harm or death.

Involved staff must undergo a critical incident stress debriefing with department psychiatrist or other approved psychiatrist within 48 hours of use of a firearm.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL401 DATE FEB. 3, 1989

SPONSOR REP. DAVE BROWN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Nick Rotering	Dept. of Institutions	✓	
Jim Pomroy	" " "	✓	
Mike Ferriter	" " "	✓	
Curt Chisholm	" " "	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325

COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.

OFFICE--ROOM 412

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
		SPONSOR: ADDY, KELLY	TITLE-CLARIFY LAW CONCERNING ACCESS TO JUSTICE DEPARTMENT REPORTS ON CAR ACCIDENTS
HB 310	02/18	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 07/01/89
		SPONSOR: SCHYE, TED	TITLE-REVISE YOUTH COURT ACT PETITION FILING TIME AND HEARING PROVISIONS
HB 312	02/06	03/24--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: CONNELLY, MARY ELLEN	TITLE-AMENDING CUSTODY MODIFICATION STATUTE TO DEFINE PRIOR "CUSTODY DECREE"
HB 313	02/17	04/04--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/04/89
		SPONSOR: GRADY, ED	TITLE-REVISE SKIER RESPONSIBILITY LAW TO ADDRESS SUPREME COURT DECISION
HB 326	02/08	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: RICE, JIM	TITLE-EXEMPT PARALEGALS, LAW ASSISTANTS AND STUDENTS FROM PRIVATE INVESTIGATOR LAW
HB 349	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-DISPOSITION OF PROPERTY USED TO VIOLATE DRUG LAWS
HB 350	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-CONVICTED PERSON TO PAY COST OF SUPERVISING HIS PAYMENT OF RESTITUTION
HB 351	02/15	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-CRIMINAL OFFENSE TO POSSESS SAWED-OFF RIFLE OR SHOTGUN
HB 368	02/09	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: COCCHIARELLA, VICKI	TITLE-NEGLIGENT VEHICULAR ASSAULT--LICENSE REVOCATION AND 12 CONVICTION POINTS
HB 386	02/13	04/24--TABLED IN COMMITTEE	
		SPONSOR: KNAPP, ROGER	TITLE-DIVIDING TAXES ON PERSONAL PROPERTY SOLD IN BANKRUPTCY
HB 393	02/28	04/03--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: DARKO, PAULA	TITLE-UNLAWFUL POSSESSION--INCLUDE CONSUMPTION--COMMUNITY SERVICE
HB 401	02/15	04/21--(H) -	FILED WITH SECRETARY OF STATE
		SPONSOR: BROWN, DAVE	TITLE-PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS
HB 409	02/09	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/23/89
		SPONSOR: GOOD, SUSAN	TITLE-CLARIFY ATTORNEY CLIENT PRIVILEGE
HB 422	02/28	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/08/89
		SPONSOR: EUDAILY, RALPH	TITLE-AMEND LIVING WILL ACT AS TO PEOPLE WHO MAY WITHHOLD LIFESUSTAINING PROCEDURE
HB 425	02/18	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: VINCENT, JOHN	TITLE-GENERALLY STIFFEN DUI PENALTIES
HB 448	02/09	03/29--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: MENAHAN, RED	TITLE-AUTHORIZE POSSESSION OF 25-YEAR OLD SLOT MACHINES
HB 454	02/06	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: CONNELLY, MARY ELLEN	TITLE-PROHIBIT APPEAL OF GUILTY PLEA TO DISTRICT COURT
HB 459	02/15	03/14--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: BROWN, JAN	TITLE-ALLOW JURIES OF LESS THAN 12 IN FELONY ACTIONS IF PARTIES AGREE
HB 471	02/15	03/30--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/30/89
		SPONSOR: GLASER, WILLIAM	TITLE-WATER DISTRICT MAY GET PREDECESSOR WATER ASSN PROPERTY BY EMINENT DOMAIN

List of Testifying Proponents and What Group they Represent:
Dave Fuller, Chairman of Lewis and Clark County Commissioners and former Chairman of the governor's Correction Advisory Council

List of Testifying Opponents and What Group They Represent:
There were none.

Testimony:

Dave Fuller said the council worked for 15 months and came up with many recommendations. This is a small program to provide supervised release and furlough program. The Board of Pardons interviewed 89 inmates in 1987 and 1988 and allowed 35 to go out of the prison on the program. It would give the Board of Pardons an additional tool to address the question of overcrowding, he stated.

Questions From Committee Members: There were none.

Closing by Sponsor: Rep. Brown closed.

At this point in the hearing Chairman Crippen returned to the hearing and assumed the gavel.

DISPOSITION OF HOUSE BILL 571

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: Senator Halligan MOVED that House Bill 571 BE CONCURRED IN. The Motion PASSED by a vote of 9 to 1 with Senator Jenkins voting NO.

HEARING ON HOUSE BILL 401

Presentation and Opening Statement by Sponsor:
Representative Dave Brown of Butte, representing District #72, opened the hearing saying that similar legislation had been heard last session and had ended up in an interim study. He said the bill's purpose was to authorize the Department of Institutions to permit probation and parole officers to carry firearms and concealed weapons under certain conditions. The bill also provides training,

supplies and equipment, he added. The recommendation for the bill came from the Criminal Justice and Advisory Council as well as from parole and probation officers. All parole and probation officers were surveyed with 7 questions and 30 indicated they had been threatened or assaulted in the course of their duties. Circumstances included making arrests in potentially risky situations, searching high risk clients, and making home visits to high risk clients where law enforcement is not readily available for backup. Other situations were in pre-sentence jail investigations, office interviews and transporting clients, he stated. In the past, there had been 12 death threats, 10 instances involving firearms, 8 instances involving knives or sharp instruments, 3 threatening phone calls to officers homes and 1 threat of sexual attack to a female officer. He urged the committee's support of the bill.

List of Testifying Proponents and What Group they Represent:

Curt Chisolm, Department of Institutions
Mike Ferriter, Department of Institutions and also representing the probation officers
Terry Minnow, Montana Federation of Teachers, Montana Federation of State Employees and affiliated local Montana Federation of Probation and Parole Officers

List of Testifying Opponents and What Group They Represent:

There were none.

Testimony:

Curt Chisolm said he had appeared as an opponent when the same legislation was heard during the last session. He changed his mind after further study and conversations with the parole field staff. This was a conservative, safe approach to the problem, he said, which contained an appropriations section and a training provision.

Mike Ferriter said his job was in the Community Corrections Division. He said the survey mentioned by Rep. Brown included all Montana probation officers, all county sheriffs, all police chiefs, all district court judges and all other adult probation authorities in the United States. He submitted the results of the survey to the committee (see Exhibit 1).
The results of the survey overwhelmingly approved of probation officers carrying firearms, he said. He mentioned areas that would require strict rules and was contingent on

the appropriate training. Presently, 3200 parolees are being supervised in the state of Montana. High risk situations do come up and this bill would answer a need, he indicated.

Terry Minnow strongly supported the bill. The parole officers had told her, she said the bill was necessary for their protection in high risk situations. She urged concurrence of the bill.

Questions From Committee Members: Senator Jenkins asked why police officers didn't assist in high risk situations, and Mike Ferriter said parole officers were instructed to ask for backup. However, they are sometimes required to do routine home checks and assistance might not be available. Searches of residences without search warrants can sometimes provide a dangerous situation, he said. In addition, he told the committee, parole officers are sometimes asked to assist law enforcement officers.

Senator Jenkins asked why a training school, separate from the Law Enforcement Academy in Bozeman, was being set up. Mr. Ferriter said the committee had looked at a variety of training possibilities and concluded that training at Montana State Prison would be fiscally correct.

Senator Beck asked if rules from the 26 states that now have this act would be used in Montana. Mr. Chisolm said they would be a frame of reference.

Senator Crippen asked why the Law Enforcement Academy wasn't being considered for the training. Mr. Chisolm said that would be explored, but thought there was a possibility that the cost would be prohibitive. Firearms training is already provided at the Montana State Prison for the correctional officers, and the same kind of training could be used by the probation and parole officers. He stressed that these people would be screened before being allowed to take the training. He also said that only well-trained personnel would be allowed to carry firearms.

Closing by Sponsor: Rep. Brown apologized for not having parole and probation officers appear at the hearing. He thought their presence might indicate more clearly the importance of the bill. He said the bill would cost $27,000 the first biennium and $25,000 the second biennium approximately. He said the House did not send the bill to appropriations, because it was considered a policy decision that the legislature had to make. Once the decision, it

will have to be included in the Department of Institutions budget. He urged concurrence of the bill for the protection of the officers and the rest of society. He said that Senator Mazurek would carry the bill on the floor of the Senate.

DISPOSITION OF HOUSE BILL 401

Discussion:

Amendments and Votes: There were none.

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 401 BE CONCURRED IN. The MOTION CARRIED on a vote of 7 to 3, the NO VOTES being cast by Senators Jenkins, Yellowtail and Crippen.

HEARING ON HOUSE BILL 592

Presentation and Opening Statement by Sponsor:

Representative Fritz Daily of Butte, representing District #69, opened the hearing. He said the bill had been requested by the Billings Fire Department and provided a requirement of restitution for costs to suppress and investigate a fire in cases or arson. The bill would be an answer to the problem of persons burning buildings when taxes are owed, he said. It would provide a lien against an insurance payment to a person convicted of arson.

List of Testifying Proponents and What Group they Represent:

Tim Bergstom, Montana State Firemen's Association
Lonny Larson, Billings Fire Department
Roger Glenn, Independent Insurance Agents of Montana
John Cadby, Montana Bankers Association
Ray Blehm, Montana Fire Marshall
Lyle Nagel, Montana State Volunteer Firefighters

List of Testifying Opponents and What Group They Represent:
There were none.

Testimony:
Tim Bergstrom asked to be put on record in support of the bill.

Lonny Larson said he had attended courses in arson detection given by the National Fire Academy, the basic and advanced

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-21-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 21, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 401 (third reading copy -- blue), respectfully report that HB 401 be concurred in.

Sponsor: Brown, D. (Mazurek)

BE CONCURRED IN

Signed: Bruce D. Crippen, Chairman

3/21/89
3:15 p.m.

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